

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ FEB 13 2012 ★
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

BELINDA HILLS, BROOKLYN OFFICE

Plaintiff,

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC,

Defendant

CV 12-000742

Case No.:

COMPLAINT AND DEMAND FOR JURY
TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

BIANCO, J.

BOYLE, M.J.

BELINDA HILLS ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C.,
alleges the following against PORTFOLIO RECOVERY ASSOCIATES, LLC, ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy;" 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States; and 28 U.S.C. § 1367 grants this Court supplemental jurisdiction over any state law claims.

3. Defendant conducts business and maintains an office in the State of New York, therefore, personal jurisdiction is established.

1 15. Plaintiff never provided her cellular telephone number to any creditor or debt
2 collector, and never authorized any creditor or debt collector to use this number to contact her.

3 16. On one occasion, in or around October 2011, Plaintiff inquired of Defendant how
4 it obtained her cellular telephone number; in response a female representative rudely told
5 Plaintiff that this was none of her business, and stated in a threatening tone that regardless of
6 Plaintiff's financial or personal circumstances, Plaintiff "is going to pay this debt!"

7 17. Plaintiff told Defendant's representatives on numerous occasions that she did not
8 owe this debt, and explained the circumstances giving rise to this alleged debt.

9 18. Plaintiff told Defendant's representatives on several occasions that she never
10 signed documentation giving rise to the debt that Defendant was seeking to collect.

11 19. Specifically, Plaintiff advised Defendant's representatives that she had purchased
12 a Lincoln Town Car from a dealership in South Carolina, and when she went to pick up the
13 Town Car they gave her a Pontiac Bonneville and forged her signature to documentation for the
14 purchase of the Bonneville; after learning the dealership would not provide her with the Town
15 Car she actually purchased, Plaintiff returned the Bonneville.

16 20. On one occasion, when Plaintiff disputed owing the debt, Defendant's
17 representative told Plaintiff that she would "pay the debt one way or another."

18 21. On various occasions, Defendant's representatives called Plaintiff's cellular
19 telephone immediately after Plaintiff hung up.

20 22. Defendant has also contacted Plaintiff at inconvenient times.

21 23. Plaintiff regularly attends church on a Sunday morning, and has advised
22 Defendant that Sunday mornings are not convenient times to contact her.

23 24. Despite this, Defendant has contacted Plaintiff prior to her leaving for church on
24 a Sunday morning.

1 25. When Plaintiff advised that this was not a convenient time for her to speak,
2 Defendant's representative pushed Plaintiff to continue the conversation and make immediate
3 payment on the debt.

4 26. In addition, Defendant has contacted Plaintiff at her place of employment.

5 27. Plaintiff is a nurse attending to seven quadriplegic children, and part of her job
6 requires the monitoring of feeding and breathing tubes.

7 28. Due to the serious nature of her position, Plaintiff is not permitted to receive
8 personal calls of any nature at her place of employment.

9 29. When Defendant contacted Plaintiff at her place of employment, Plaintiff had to
10 request another nurse monitor her patients' room, while at the same time monitoring the room
11 the other nurse was already assigned to monitor.

12 30. Plaintiff was then forced to take Defendant's collection call at a nursing station
13 with another nurse present.

14 31. Plaintiff advised Defendant that it was not convenient for her to receive calls at
15 her place of employment due to the nature of her position, and further, that such calls were not
16 permissible.

17 32. Defendant's representative did not care that Plaintiff was not permitted to receive
18 calls of this nature at work or that Plaintiff worked with quadriplegic children and needed to
19 return to them, and instead pushed Plaintiff to pay the alleged debt.

20 33. Because Defendant's representative was pushy and did not heed Plaintiff's
21 indication that she could not speak because she was caring for ill children, the children were left
22 without Plaintiff's care for several minutes, placing their health and well-being at risk.

23 34. As a result of Defendant's frequent calls, and its failure to understand that
24 Plaintiff did not owe this debt, Plaintiff repeatedly requested that Defendant cease calling her.
25

1 35. However, Defendant ignored this request and continued calling Plaintiff seeking
2 to collect this debt she did not owe.

3 36. Plaintiff found these repeated harassing telephone calls to be both frustrating and
4 annoying as she did not owe this debt and with knowledge of this Defendant persisted in its
5 efforts to collect this debt from her.

6 20. Since Plaintiff repeatedly advised Defendant that she did not owe this debt and
7 advised them to cease communication with her, Defendant could only have taken the actions
8 described herein with the intent to harass, abuse, and coerce Plaintiff into paying an alleged debt
9 that Plaintiff denies owing.
10

11
12 **COUNT I**
13 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**
14 **15 U.S.C. §1692 et. seq.**

15 21. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
16 more of the following ways:

- 17 a. Contacting Plaintiff at a place or time that it knew was inconvenient for
18 Plaintiff, in violation of 15 U.S.C. §1692c(a)(1);
19 b. Contacting Plaintiff at her place of employment with reason to know such
20 conduct is prohibited, in violation of 15 U.S.C. §1692c(a)(3);
21 c. Harassing, oppressing or abusing Plaintiff in connection with the collection of
22 a debt, by calling Plaintiff repetitively, in violation of 15 U.S.C. §1692d;
23 d. When it caused the Plaintiff's telephone to ring repeatedly or continuously with
24 the intent to harass, annoy or abuse Plaintiff, in violation of 15 U.S.C.
25 §1692d(5);
 e. Using false, deceptive, or misleading representations or means in connection

1 with the collection a debt, in violation of 15 U.S.C. §1692e;

2 f. Misrepresenting the character, amount, or legal status of Plaintiff's debt in
3 violation of 15 U.S.C. § 1692e(2)(A);

4 g. Using misrepresentations or deceptive means to collect a debt in violation of
5 15 U.S.C. § 1692e(10);

6 h. Using unfair or unconscionable means to collect or attempt to collect any
7 debt, in violation of 15 U.S.C. §1692f; and

8 i. Collecting an amount not expressly authorized by agreement between the
9 parties or by law in violation of 15 U.S.C. §1692f(1).

10
11 **PRAYER FOR RELIEF**

12
13 WHEREFORE, Plaintiff, BELINDA HILLS, respectfully prays for a judgment as
14 follows:

15 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
16 1692k(a)(1);

17 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
18 15 U.S.C. § 1692k(a)(2)(A);

19 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
20 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);

21 d. Any other relief deemed appropriate by this Honorable Court.

22
23 **DEMAND FOR JURY TRIAL**

24 PLEASE TAKE NOTICE that Plaintiff, BELINDA HILLS, demands a jury trial in this
25 case.

1 DATED: 02/07/12

KIMMEL & SILVERMAN, P.C.

2 By: _____

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